IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 15366 of 2005(D)

AGAINST THE ORDER DATED 5/4/05 IN EA.611/2005 IN EA.205/05 IN OS.372/1999 of PRL.SUB COURT,IRINJALAKUDA

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PETITIONER:

SOMAN, S/O,ONAKKATTIL CHELLAPPAN ACHARI,
METHALA VILLAGE, KODUNGALLUR.

BY ADV. SRI.K.A.SREEJITH

RESPONDENT:

LORD KRISHNA BANK LIMITED,
REPRESENTED BY ITS BRANCH MANAGER,
KODUNGALLUR BRANCH.

BY ADV. SRI.B.JAYASANKAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.15366/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PETITION FILED BY PETR. DT.26.2.05 BEFORE THE EXECUTION COURT.

EXT.P2 – TRUE COPY OF ORDER DT.5.4.05 PASSED BY EXECUTION COURT.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.15366 OF 2005

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DATED THIS THE 3RD AUGUST, 2007

J U D G M E N T

The petitioner filed an application Ext.P1 for cancellation of the sale certificate on the reason that after the confirmation of sale and issuance of the sale certificate but before delivery was taken by the certificate holder on the strength of the sale certificate, the entire amount due to the respondent-bank, inclusive of the expenses incurred for the sale certificate, was paid by the petitioner to the bank. The Bank did not have any objection in the matter of allowing the application. The court below however dismissed the application taking the view that there is no provision for cancelling the sale certificate and that the proper course will be to take a re-conveyance of the property. The petitioner challenges the order of the court below in this Writ Petition filed under Article 227.

2. Not that I do not find at least technical merit in the view taken by the learned Subordinate Judge, but the learned Judge should have noticed that notwithstanding the sale certificate, possession of the property continued with the petitioner and the respondent-bank was yet to take possession on the strength of the sale certificate by filing an application under Rule 95 of Order XXI C.P.C. To that extent

it can be said that the title acquired by the decree-holder by virtue of the sale certificate had not become perfect, since the same is not followed by possession. Even otherwise, on considerations of justice and on the consideration that the court has got a duty to avoid unnecessary financial burden for litigating parties, I invoke the supervisory jurisdiction of this Court and set aside the impugned order and allow E.A.No.611 of 2005.

The Writ Petition is allowed as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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